

## Message Text

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TO USDEL SECRETARY IMMEDIATE

UNCLAS STATE 312662 TOSEC 340101

E.O. 11652: N/A

TAGS: SOPN, OVIP (KISSINGER)

SUBJECT: PRESS MATERIAL

1. HERewith FULL TEXT DON OBERDORFER PAGE TWO BYLINER  
WASHINGTON POST WEDNESDAY, DEC. 29, HEADED "KISSINGER  
GIVES DISPUTED PHONE NOTES TO LIBRARY."
2. SECRETARY OF STATE HENRY A. KISSINGER, HAS DONATED  
THE DISPUTED RECORDS OF HIS TELEPHONE CONVERSATIONS TO  
THE LIBRARY OF CONGRESS IN AN EFFORT TO AVOID CONTROVERSY  
IN HIS FINAL DAYS IN OFFICE. BUT A REPORTERS GROUP  
ANNOUNCED IT WILL FILE A LAW SUIT IN AN EFFORT TO OBTAIN  
PUBLIC ACCESS TO THE DOCUMENTS.
3. KISSINGER'S ACTION, TAKEN OVER THE CHRISTMAS HOLIDAY  
AFTER A FLURRY OF CONFERENCES WITH HIS LEGAL ADVISERS AND  
OTHER OFFICIALS, WAS ANNOUNCED BY THE STATE DEPARTMENT  
ABOUT AN HOUR AFTER NINE FILE DRAWERS OF THE HIGHLY SENSI-  
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TIVE TELEPHONE RECORDS WERE TAKEN TO THE LIBRARY OF CON-  
GRESS IN A PRIVATE VAN YESTERDAY MORNING. OFFICIALS  
INVOLVED IN THE TRANSACTION SAID THEY DID NOT KNOW THE  
POINT OF ORIGIN FOR THE DELIVERY.

4. ON THE BASIS OF AN OPINION HE OBTAINED FROM STATE

DEPARTMENT LEGAL ADVISER MONROE LEIGH, KISSINGER HAS CLAIMED THAT THE EXTENSIVE SECRETARIAL NOTES OF HIS TELEPHONE CONVERSATIONS WHILE IN OFFICE ARE HIS PERSONAL PROPERTY TO USE OR DISPOSE OF AS HE SAW FIT. AIDES SAID HE DOES NOT PLAN TO LEAVE COPIES OF THIS DATA IN GOVERNMENT FILES.

5. THE TELEPHONE TRANSCRIPTIONS HAD BEEN SPECIFICALLY EXCLUDED FROM KISSINGER'S EARLIER DONATION OF MOST OF HIS RECORDS TO THE LIBRARY OF CONGRESS. A CONDITION OF THAT DONATION, ANNOUNCED DEC. 20, WAS THAT KISSINGER OR PERSONS NAMED BY HIM WOULD CONTROL ACCESS TO THE PAPERS FOR 25 YEARS OR FIVE YEARS AFTER HIS DEATH, WHICHEVER IS LATER.

6. PUBLIC ACCESS TO THE TELEPHONE DOCUMENTS IS RESTRICTED ON THE SAME BASIS, EXCEPT THAT PERMISSION OF THE OTHER PARTY TO THE TELEPHONE CONVERSATION WITH KISSINGER WOULD ALSO BE REQUIRED AS LONG AS THE OTHER PARTY LIVES. THIS ARRANGEMENT WAS CONTAINED IN AN AGREEMENT SIGNED BY KISSINGER ON CHRISTMAS EVE AND BY LIBRARIAN OF CONGRESS DANIEL J. BOORSTIN ON CHRISTMAS DAY.

7. THE STATE DEPARTMENT ANNOUNCEMENT MADE CLEAR THAT KISSINGER HAS NOT BACKED AWAY FROM HIS CLAIM THAT THE TELEPHONE DATA IS HIS PRIVATE PROPERTY. THIS ASSERTION IS THE TARGET OF THE LAW SUIT WHICH THE REPORTERS COMMITTEE ON FREEDOM OF THE PRESS, A PRIVATE ORGANIZATION, ANNOUNCED THAT IT WILL FILE AGAINST THE GOVERNMENT.  
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8. ROBERT HERZSTEIN, ATTORNEY FOR THE REPORTERS GROUP, REPEATEDLY TOLD THE STATE DEPARTMENT IN THE PAST MONTH THAT A SUIT WOULD BE FILED IF KISSINGER ATTEMPTED TO KEEP PAPERS AS HIS PRIVATE PROPERTY, A STATEMENT BY THE ORGANIZATION SAID. HERZSTEIN SAID THE SUIT WILL CLAIM ACCESS TO THE TELEPHONE DATA UNDER THE FREEDOM OF INFORMATION ACT.

9. A NOV. 15 RULING BY THE NATIONAL ARCHIVES AND RECORDS SERVICE IS EXPECTED TO FIGURE IN THE LEGAL ACTION. IN THAT DOCUMENT, SENT TO HEADS OF ALL U.S. DEPARTMENTS, THE ARCHIVES SAID THAT "PERSONAL PAPERS" OF GOVERNMENT OFFICIALS CONSIST OF MATERIAL "PERTAINING SOLELY TO AN INDIVIDUAL'S PRIVATE AFFAIRS" AND THAT "MATERIAL RELEVANT TO THE CONDUCT OF PUBLIC BUSINESS" IS AN OFFICIAL RECORD.

10. THE STATE DEPARTMENT'S RECORDS MANAGEMENT REGULATIONS, AS PUBLISHED JULY 28, 1975, DESCRIBE PERSONAL PAPERS

AS "PAPERS OF A PERSONAL CHARACTER WHICH PERTAIN ONLY TO AN INDIVIDUAL'S PRIVATE AFFAIRS." THE REGULATIONS SAY

THAT "WHEN OFFICIAL POLICY MATTERS ARE DISCUSSED IN PERSONAL CORRESPONDENCE, THAT PORTION PERTAINING TO FUNCTIONS OR ACTIVITIES OF THE (STATE) DEPARTMENT ... IS TO BE EXTRACTED AND MADE A PART OF THE OFFICIAL RECORDS."

11. STATE DEPARTMENT OFFICIALS SAID THAT KISSINGER'S EXECUTIVE ASSISTANT, LAWRENCE S. EAGLEBURGER, HAS BEEN GOING THROUGH THE TELEPHONE DOCUMENTS TO PREPARE EXTRACTS OF MATTERS PERTAINING TO OFFICIAL BUSINESS. HOWEVER, THE OFFICIALS SAID THE GUIDELINES FOR EAGLEBURGER REQUIRE AN EXTRACT FOR GOVERNMENT FILES ONLY IF THE MATERIAL IN THE TELEPHONE CONVERSATION IS NOT REFLECTED IN ANOTHER GOVERNMENT DOCUMENT.

12. THIS RESTRICTIVE VIEW OF WHAT KISSINGER MUST LEAVE UNCLASSIFIED

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BEHIND ABOUT HIS TELEPHONE CONVERSATIONS IS BASED ON A RULING BY LEGAL ADVISER LEIGH. EVEN THIS LIMITED REVIEW OF THE VOLUMINOUS TELEPHONE RECORDS MAY BE INCOMPLETE BY THE TIME KISSINGER LEAVES OFFICE JAN. 20, OFFICIALS CONCEDED.

13. STATE DEPARTMENT RECORDS OFFICERS SCREENED THE 17 FILING CABINETS OF OFFICIAL PAPERS WHICH KISSINGER GAVE TO THE LIBRARY OF CONGRESS IN HIS EARLIER AGREEMENT, MAKING SURE THAT A COPY OF EACH DOCUMENT IS RETAINED IN STATE DEPARTMENT FILES. THE SCREENING OF THE TELEPHONE CONVERSATIONS IS BEING DONE BY EAGLEBURGER RATHER THAN RECORDS OFFICERS BECAUSE OF KISSINGER'S VIEW THAT THE PHONE DATA IS HIS PERSONAL PROPERTY, OFFICIALS SAID.

14. "IT IS OUR BELIEF THAT THESE TELEPHONE TRANSCRIPTS-- COMPILED BY A GOVERNMENT OFFICIAL IN THE COURSE OF HIS GOVERNMENT EMPLOYMENT AND PREPARED BY GOVERNMENT EMPLOYEES ON GOVERNMENT TIME--BELONG TO THE PUBLIC AND NOT TO MR. KISSINGER," SAID THE STATEMENT BY THE REPORTERS COMMITTEE. THE SAME ARGUMENT WAS MADE BY THAT GROUP, JOINED BY THE AMERICAN HISTORICAL ASSOCIATION AND THE AMERICAN POLITICAL SCIENCE ASSOCIATION, IN A LAWSUIT OVER PRESIDENT NIXON'S TAPE RECORDINGS AND RECORDS. THAT SUIT IS STILL PENDING. THE TWO ASSOCIATIONS WERE REPORTED YESTERDAY TO BE WEIGHING A DECISION ON JOINING THE LAWSUIT IN THE KISSINGER DOCUMENTS. (END TEXT)  
ROBINSON

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